

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6828

BILL NUMBER: SB 347

NOTE PREPARED: Jan 13, 2012

BILL AMENDED:

SUBJECT: Marijuana Offenses.

FIRST AUTHOR: Sen. Tallian

FIRST SPONSOR:

BILL STATUS: As Introduced

**FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It provides that operating a vehicle with an inactive metabolite of marijuana, hashish, or hash oil in one's body does not violate the impaired driving laws.
- B. *Possession of Marijuana* – It makes possession of less than three ounces of marijuana a Class C infraction. It makes possession of more than three ounces of marijuana a Class B misdemeanor, and makes the offense a Class A misdemeanor if the person has two or more prior convictions involving marijuana in the past five years. It requires a court to suspend a sentence imposed for possession of marijuana if the person does not have a previous conviction involving marijuana in the past five years, and requires a court to defer a sentence if the person pleads guilty to misdemeanor possession of marijuana.
- C. *Dealing Marijuana* – It makes the sale or delivery of more than three ounces of marijuana a Class A misdemeanor, and makes the offense a Class D or Class C felony under certain circumstances. It provides a defense if a person who delivers under ten pounds of marijuana does so for no consideration.
- D. *Public Use or Display of Marijuana* – It makes the public use or display of marijuana a Class B misdemeanor, and makes the offense a Class A misdemeanor if the person has two or more prior convictions for an offense involving marijuana in the past five years.
- E. *Common Nuisance* – It reduces the penalty for maintaining a common nuisance to a Class A misdemeanor if the only unlawful controlled substances involved were marijuana, hashish, or hash oil.
- F. *Controlled Substance Excise Tax* – It repeals the controlled substance excise tax.
- G. It makes conforming amendments.

Effective Date: July 1, 2012.

Explanation of State Expenditures: The following table shows the proposed changes in penalties for possessing and dealing in marijuana.

Proposed Changes in Marijuana Laws				
	Current Law		Proposed	
Possession	Less than 30 grams	Class A Misdemeanor	Less than 3 oz.	Class C Infraction
	More than 30 grams	Class D Felony	More than 3 oz. 2 nd or more offense	Class B Misdemeanor Class A Misdemeanor
Public Use	Same as Possession		1 st Offense	Class B Misdemeanor
			2 nd or More	Class A Misdemeanor
Dealing	Less than 30 grams	Class A Misdemeanor	Less than 3 oz.	Possession Class C Infraction
	Between 30 grams and 10 lbs. or delivered to person under 18 yrs. old	Class D Felony	Between 3 oz. and 2 lbs.	Class A Misdemeanor
			Between 2 lbs. and 10 lbs. or delivered to person under 18 yrs. old	Class D Felony
	More than 10 lbs.	Class C Felony	More than 10 lbs.	Class C Felony
Maintaining a Common Nuisance	Class D Felony		Class A Misdemeanor (If dwelling only contained marijuana, hashish, or hash oil)	

Reducing the Penalty for Possession from a Class D Felony – Currently, the penalty for possessing more than 30 grams (or 1.058 oz) is a Class D felony. This bill would make the worst penalty for possession of marijuana a Class A misdemeanor. Based on commitments between 2006 and 2010, the average sentence is 1.3 years. Assuming that these offenders will serve 8 months (2/3 year), the Department of Correction (DOC) could save an estimated 250 beds annually ($375 \times 2/3 = 250$ beds).

Reducing the Penalty for Dealing from a Class D Felony – This bill increases the cutoff for a Class D felony to 2 pounds, meaning that anyone who is sentenced for dealing in marijuana for less than 2 pounds would be subject to a Class A misdemeanor instead of a felony. The current cutoff for a Class D felony is 30 grams, or 1.06 ounces. The number of offenders who could be affected by this provision is unknown because the amount of marijuana that each offender was convicted of dealing is not available.

Offenders Committed to DOC Facilities for Class D Felonies

Offense	2006	2007	2008	2009	2010	Avg. Annual
Dealing marijuana/hashish	57	51	54	65	71	60
Possession of marijuana/hashish	<u>330</u>	<u>335</u>	<u>382</u>	<u>391</u>	<u>438</u>	375
Grand Total	<u>387</u>	<u>386</u>	<u>436</u>	<u>456</u>	<u>509</u>	435

Maintaining a Common Nuisance – “Maintaining a common nuisance” involves maintaining a structure, building, or vehicle for the purposes of manufacturing, upkeeping, offering for sale, selling, delivering or financing the delivery of controlled substances or paraphernalia. The current penalty is a Class D felony. There were 85 persons who were committed to DOC for maintaining a common nuisance in 2010. The number of persons who would have otherwise received sentences for misdemeanors is not available.

Explanation of State Revenues: *Repeal of Controlled Substance Excise Tax* – Any revenue loss will be minimal. Between FY 2009 and 2011, the Department of Revenue collected \$595 for all three years. The Department of Revenue (DOR) reports that it rarely assesses this tax unless requested by a prosecutor as part the case strategy due to the frequent claims of double jeopardy as part of the defense. Generally, DOR impose sales and income taxes on these cases.

Explanation of Local Expenditures: Persons who are arrested and are in jail awaiting trial may not have to spend as much time in jail if they are being tried for misdemeanors rather than felonies. Between 2006 and 2010, offenders who were committed to DOC spent an average 48 days in jail awaiting trial. All of the Class D offenders who were committed for dealing marijuana were held in jail awaiting trial, while 86% of the Class D offenders were in jail at least one day awaiting trial. Similar information on the number of persons who were convicted of misdemeanors involving marijuana are not available.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: County sheriffs.

Information Sources: DOC offender information System; *Indiana Handbook of Taxes, Revenues and Appropriations*, FY 2011.

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